

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Application of the University of Vermont Medical)	
Center for the Purchase of a Building at 350)	
Tilley Drive for Relocation of Outpatient)	GMCB-003-22con
Dermatology and Ophthalmology Practices)	
_____)	

STATEMENT OF DECISION AND ORDER

Introduction

In this Statement of Decision and Order we review the application of the University of Vermont Medical Center (UVMMC or “the Applicant”) for a certificate of need (CON) to purchase the land and building located at 350 Tilley Drive in South Burlington, Vermont, and to consolidate and relocate its existing outpatient Dermatology and Ophthalmology practices to this new location (“the project”). The cost of the project is \$35,246,100.

For the reasons set forth below, we approve the application and issue the applicant a certificate of need, subject to the conditions set forth therein.

Procedural Background

On January 20, 2022, UVMMC filed a CON application and request for expedited review. On February 14, 2022, the Green Mountain Care Board (Board) granted UVMMC’s request for expedited review. The Board requested additional information regarding the project on February 18, March 2, April 12, August 4, September 21, October 21, and December 6, 2022, which UVMMC provided on April 11, July 29, August 4, September 16, October 5, October 31, and December 20, 2022. The application was closed on November 8, 2022.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9375(b)(8) and 18 V.S.A. § 9434(b)(1).

Findings of Fact

1. UVMMC currently operates outpatient Dermatology and Ophthalmology practices in multiple locations in Burlington. The Dermatology practice is split into two units on UVMMC’s main campus; one unit is located in the Ambulatory Care Center (ACC) West Pavilion on the fifth floor (WP5) and the other unit is located on the third floor of the ACC East Pavilion (EP3). UVMMC’s main Ophthalmology practice is located on the fifth floor of the ACC West Pavilion, with an additional Ophthalmology practice at 462 Shelburne Road. Application (App.), 3-4, 9.

2. UVMMC's Dermatology and Ophthalmology practices are two of the busiest specialty practices on the hospital's main campus. In their current locations, the practices have limited physical space and cannot be expanded to accommodate growing demand for services. App., 3-4, 9, 14.

3. In connection with this project, UVMMC practice managers determined typical wait times for different types of visits at the Dermatology and Ophthalmology practices by manually reviewing provider schedules in the EPIC electronic health record to identify the next available appointment that most patients could reliably schedule. These wait times are reflected in the following tables:

Typical Wait Times (next available appointment) for Dermatology			
Visit Type	As of July 2021	As of Jan. 2022	As of Sept. 2022
New Patient Visit	7 weeks	16 weeks	16 weeks
Mohs consult ¹	5 weeks	5 weeks	12 weeks

Typical Wait Times (next available appointment) for Ophthalmology			
Visit Type	As of July 2021	As of Jan. 2022	As of Sept. 2022
New Patient Visit	6 weeks	8 weeks	8 weeks
Retina New Patient Visit	5 weeks	7 weeks	7 weeks
Cataract Surgery	4-6 weeks	13 weeks	13 weeks
Pediatric New Patient Visit	17 weeks	22 weeks	22 weeks

UVMMC attributes the increase in the wait time for a Mohs consult between January and September 2022 to the loss of a Mohs surgeon. *See App., 3-4; Response to Questions (Resp.) (Sept. 16, 2022), 3.*

4. If the project is implemented, UVMMC estimates that these wait times would decrease, as reflected in the following tables:

Typical Wait Times (next available appointment) for Dermatology			
Visit Type	Year 1	Year 2	Year 3
New Patient Visit	11 weeks	10 weeks	10 weeks
Mohs consult	7 weeks	5 weeks	5 weeks

Typical Wait Times (next available appointment) for Ophthalmology			
Visit Type	Year 1	Year 2	Year 3
New Patient Visit	6 weeks	5 weeks	4 weeks
Retina New Patient Visit	6 weeks	5 weeks	4 weeks
Cataract Surgery	5 weeks	3 weeks	3 weeks
Pediatric New Patient Visit	20 weeks	18 weeks	15 weeks

UVMMC cautions, however, that actual wait times may vary from these estimates as they depend on multiple variables. *Response to Questions (Resp.) (Sept. 16, 2022), 3.*

¹ Mohs micrographic surgery is used to treat common forms of skin cancer. App., 4, n.2.

5. Dermatology visit volumes at UVMMC grew by 12% between fiscal year (FY) 2017 and FY 2019. Ophthalmology visit volumes grew by 29% during the same period, an increase that is attributable in part to new Ophthalmologists joining the UVM Health Network Medical Group in 2017 and 2018. Combined, these two specialties had approximately 71,000 patient visits in FY 2019, a 9% increase over FY 2018 and an almost 20% increase from FY 2017. App., 5.

6. The region's population is aging and current demand for Dermatology and Ophthalmology services is strong and projected to increase. App., 19. UVMMC subscribes to national consultancy group Sg2's database and analytics tool to generate demand model projections for business planning and CON applications. According to the Sg2 database and analytics tool, from 2019 to 2023, Dermatology visit volumes at UVMMC are projected to increase by 17% and Ophthalmology visit volumes are projected to increase by 29%. The methodology assumes no increase in UVMMC's market share within the Burlington Health Service Area (HSA). Using the Sg2's subscription Ambulatory Market Strategist service, UVMMC estimates that in the Burlington HSA in 2018 UVMMC's Dermatology practice had an approximately 54% share of Dermatology-related patient visits and the Ophthalmology practice had an approximately 56% share of Ophthalmology-related patients visits. App., 5; Resp. (April 11, 2022), 3.

7. The project will consolidate UVMMC's Dermatology and Ophthalmology practices, which are currently housed in multiple locations, into one building. The project will also increase the number of clinical patient care rooms and support areas (e.g., nurse stations and utility and lab areas) at each practice. These additions will allow the practices to increase efficiencies and accommodate additional providers and support staff to better meet current and projected growth in demand. App., 8-9, 18-19. *See Findings of Fact (Findings), ¶¶ 8-12, infra.*

8. To arrive at the optimal number of patient care rooms consistent with projected demand through 2028, UVMMC translated case volumes into average case length in minutes and then translated average case length in minutes into the number of rooms needed. With an average of 40 minutes per dermatology visit, UVMMC determined that 29 rooms will be needed for a projected 43,500 dermatology visits in 2028. With an average 50 minutes per ophthalmology visit, 36 exam rooms will be needed for a projected 43,200 ophthalmology visits in 2028. App., 8-9.

9. As shown in the tables below, the Dermatology practice currently has 20 exam rooms, 2 laser treatment rooms, 1 phototherapy room, and 6 Mohs procedure rooms; the ophthalmology practice has 32 exam/screening rooms, 11 testing rooms, and 5 laser/procedure/photography rooms; and the project will add 14 clinical spaces at the Dermatology practice (9 exam rooms, 1 laser treatment room, 1 phototherapy room, 2 Mohs procedure rooms, and 1 suture removal room) and 5 clinical spaces at the ophthalmology practice (4 exam/screening rooms and 1 testing room):

Dermatology OP Clinic Space			
Clinical Space	Current	Future	Change
Exam Rooms	20	29	+9
Laser Treatment Rooms	2	3	+1
Phototherapy Rooms	1	2	+1
MOHS Procedure Rooms	6	8	+2
Suture Removal	-	1	+1

Ophthalmology OP Clinic Space			
Clinical Space	Current*	Future**	Change
Exam / Screening Rooms	32	36	+4
Testing Rooms	11	12	+1
Laser / Procedure Rooms /Photography Room	5	5	-

* In addition to OP cases the current UVMMC ACC clinic provides services to Inpatient and Emergent cases

** Not included in the future room count are 2 exam rooms and 1 procedure room at ACC designated for IP and Emergent cases

UVMMC's Ophthalmology Department will retain the use of two exam rooms and one procedure room on the main campus for use in treating hospital inpatients, emergent cases, and patients who must be seen outside of the 350 Tilley Drive outpatient clinic's business hours. As noted, these rooms are not reflected in the table above. App., 8-9.

10. The relocated practices or clinics will be modeled on a patient-centered pod design concept that focuses on maximizing workflow efficiencies for providers and staff. UVMMC's design process analyzed patient flow to ensure privacy, safety, and convenience during the patient care encounter. The proposed new facilities will have the capacity to accommodate up to a 35% increase in annual Dermatology in-person office-based visits and up to a 38% increase in annual Ophthalmology in-person office-based visits. App., 8; Resp. (April 11, 2022), 2.

11. UVMMC worked with Halsa Advisors to design the project's floorplan and determine the appropriate number of exam rooms for the practices. UVMMC states that the new location will allow for scheduling optimization and workspace efficiencies and enable the practices to attract and accommodate additional providers to meet the growing demand for services. Consolidating the multiple offices into a single, larger off-campus location will accommodate more patient visits. App., 3, 8, 14, Table 7B; Resp. (Sept. 16, 2022), 1-2.

12. UVMMC expects that, due to the project, physician office visits will increase by 18,564 in 2024; 20,262 in 2025; 21,924 in 2026; 23,367 in 2027; and 24,788 in 2028; a total of 108,904 additional office visits over the five-year period. Resp. (Oct. 5, 2022), Table 7B.

13. UVMMC states that its Ambulatory Master Facility Plan identified the Dermatology and Ophthalmology practices as highly ambulatory services that should be moved off the main campus to make space for other services with a heavy inpatient component and services that support

emergent care and therefore are most appropriately located on the main campus. One example of this plan is to move Neurology from its South Prospect Street location into the space on the main campus being vacated by the Dermatology and Ophthalmology practices. App., 3, 7, 14-15.

14. UVMHC will purchase a recently completed two-story structure located at 350 Tilley Drive (Lot 5) in South Burlington from Pizzagalli Properties. The facility is situated on 14.36 acres of land approximately 3.9 miles from the UVMHC main campus and 3.8 miles from the Ophthalmology practice's 462 Shelburne Road location. The building is part of the Tilley Drive office park, which hosts several other UVMHC outpatient specialty practices, including endocrinology, interventional pain medicine, orthopedics and rehabilitation, cardiology, cardiac rehabilitation, and pulmonary rehabilitation. App., 3, 7-8.

15. The building to be purchased is a 54,053 square foot (plus entrance, lobby and porte-cochere) contemporary brick and steel building. The building is unoccupied and currently has minimal infrastructure. App., 7. The project includes UVMHC's fit-up of 24,115 department gross square feet (DGSF) on the first floor to accommodate the Ophthalmology practice and 25,032 DGSF on the second floor for the Dermatology practice. The project also includes the construction and fit-up of a 2,220 sq. ft. metal panel and masonry addition for staff entry, freight/staff elevator, loading area, and support space for the building. The support space includes a central supply room, storage, waste management areas, an employee locker and shower room, and a lactation room for employee use. App., 3, 8, 16.

16. The existing building was designed to meet or exceed 2015 Vermont Commercial Building Energy Standards (CBES), with a goal of securing LEED Certification and an EnergyStar score of 75 or greater. UVMHC will work with Efficiency Vermont, Green Mountain Power, and Vermont Gas Systems as the design for the building's interior and new addition is finalized. The building addition will be constructed to meet or exceed 2020 CBES; LED lighting will be used in conjunction with the building's high efficiency cooling and heating systems, and an energy model will be used to validate the expected design and overall energy performance of the building. UVMHC is accredited by the Joint Commission and therefore required to follow the pertinent FGI Guidelines for design and construction of outpatient facilities. App., 9-10, 17.

17. In accordance with its plan at the time of application, UVMHC has established a free, fixed-route shuttle service from the Green Mountain Transit (GMT) Downtown Transit Center on Cherry Street in Burlington to Tilley Drive. There are four regularly scheduled trips daily, Monday through Friday, with a stop at each of the medical office buildings along Tilley Drive. The service is free to passengers. *See* App., 10, 19-20. The 350 Tilley Drive site also includes 260 parking spaces and 10 electric vehicle (EV) charging stations. App., 8.

18. All 28 current Dermatology and Ophthalmology providers and support staff will be transferred to the new building. Of the personnel to be transferred, 16 are Dermatology providers. The project will add six additional staff. UVMHC plans to add Medical Assistants (2.0 FTE) and a Patient Support Specialist (1.0 FTE) to address the growth in Dermatology visits and to enable full productivity of an additional Dermatology provider (1.0 FTE). The Ophthalmology department plans to onboard an additional provider (1.0 FTE) in FY 2023, ahead of the move to the new Tilley Drive location and to add a second provider (1.0 FTE) in FY 2027. The costs

associated with the additional providers and support staff are included in the financial tables submitted as part of the application. App., 9, Resp. (Sept. 16, 2022), 1, Resp. (Oct. 5, 2022), Table 8B (Staffing Report).

19. It is expected that there will be no down time for either of the practices due to the project. All new furniture, equipment, materials, and supplies will be moved to 350 Tilley Drive once a certificate of occupancy is secured. Each department will then relocate over non-consecutive weekends. There will be no change to operating hours and the same services will continue to be provided at the new location. UVMMC represents that relocation and consolidation of the existing Dermatology and Ophthalmology clinics to the new site will not impact ongoing data collection and monitoring efforts, established practice protocols, adherence to evidence-based practices, and compliance with applicable standards and requirements relating to infectious disease control, including the Joint Commission's requirements on Infection Prevention and Surveillance. App., 9-10, 16.

20. UVMMC performed a financial analysis to determine whether to purchase or lease the building at 350 Tilley Drive, including a capital and depreciation schedule, a five-year incremental pro forma P&L, cash flow, and net present value calculation. UVMMC engaged in a competitive "Request for Proposal" (RFP) process for a design/build team for the project. Four proposals were received; UVMMC selected Scott + Partners Architects and ReArch Construction. Because the proposals submitted were sufficiently comprehensive to benchmark the proposed costs against other projects, UVMMC believes that the selected team's proposal is reasonable. App., 11, 16. UVMMC has determined that based in part on cash flow analysis, purchasing the property would save \$2.3 million over 20 years as compared to leasing the facility. *See UVMMC Conceptual Development Phase Certificate of Need for Relocation of Dermatology and Ophthalmology Practices*, Docket No. GMCB-002-22con, UVMMC Letter Requesting for Relief from Sanctions (January 20, 2022), 3.

21. UVMMC reports incremental net operating losses in years one through five, ranging from negative \$1,321,819 in year 1 (2024) to negative \$661,591 in year 5 (2028), and states that it does not expect an incremental positive operating margin until Project Year 9. Resp. (Oct. 5, 2022), Table 3B; Resp. (Dec. 20, 2022), 1-2; Resp. (Dec. 20, 2022), 3. The new location of the project results in a lower reimbursement rate for Medicare visits because the future facility reimbursement will no longer be calculated at the Outpatient Prospective Payment System (OPPS) full payment rate. If not for the anticipated reduction in Medicare reimbursements, a positive margin for the project would have been expected. Resp. (Dec. 20, 2022), 4. Except for the Ophthalmology clinic on Shelburne Road (which is already subject to the lower reimbursement rate), the reimbursement change will affect all the practices that will be relocated in connection with the project. Using FY 2021 Medicare volumes as the basis for the calculation, UVMMC estimates the impact will be a reduction of \$3.9M annually. While the incremental volumes projected for the clinics produce a positive contribution margin, the impact of the reduced Medicare reimbursement results in a net \$1.2 million margin loss in the first year of operations. App., 11-12. Although the project will not produce an incremental positive operating margin for eight years, UVMMC believes it needs to develop this project to provide access to Dermatology and Ophthalmology services. Resp. (Dec. 20, 2022), 3.

22. UVMMC does not anticipate that this project will result in, or meaningfully contribute to, future requests to increase commercial rates or charges. Resp. (Dec. 20, 2022), 1; *see also* Resp. (Sept. 16, 2022), 2. UVMMC asserts that its annual rate requests are tied to year-over-year per unit cost inflation, the vast majority of which is generated by increases in salaries and the cost of supplies. UVMMC states that this project will increase its base expense but not its per unit expense because the project will enable the Dermatology and Ophthalmology clinics to serve more patients. Base expense in this context means the total operating expense for the clinics and per unit expense means the quotient of the base expense divided by the clinics' patient volumes (i.e., the average operating expense to serve a patient). UVMMC also asserts that the incremental operating loss the project will generate is too small relative to UVMMC's total operating revenue in years 1-5 of this project, ranging from \$2.0 to \$2.3 billion, to have any material impact on UVMMC's commercial rate requests in project years 1-5. Resp. (Dec. 20, 2022), 1-2.

23. In connection with the project, UVMMC will terminate its lease for the Ophthalmology practice currently located at 452 Shelburne Road. The budget for this property in FY 2023 is approximately \$254,000. UVMMC plans to repurpose the space being vacated on the main campus for Neurology at a later date. UVMMC's Neurology practice is currently located in leased space in a building located at 1 South Prospect Street in Burlington. Once Neurology is relocated to the main campus, UVMMC intends to terminate the lease of the space at 1 South Prospect Street. Resp. (Dec. 20, 2022), 5; *see* Findings, ¶ 13, *infra*.

24. The total project cost is \$35,246,100. Resp. (October 5, 2022), revised financials, Table 1. In the application, UVMMC represented that the project would be financed with equity with no debt financing. App., 3, 18. UVMMC states that using equity to finance the project will reduce its days' cash on hand by approximately seven days. However, in response to GMCB questions, UVMMC stated that it is possible that planned borrowing by the University of Vermont Health Network, Inc. (UVMHN) to fund Network affiliates' capital projects may be used to finance this project and that this decision will not be made until the CON for the project is approved based on total network cash levels and other considerations unrelated to this project. If UVMMC finances the project and does not use equity, there will be no impact on UVMMC's days' cash on hand. Resp. (Oct. 5, 2022), 1, Resp. (Oct. 31, 2022), 1-2. As of September 30, 2022, UVMMC had approximately 112 days' cash on hand and, as noted above, if equity is used to finance the project, UVMMC's days' cash on hand will be further reduced by seven days. UVMMC represents that debt covenants for UVMHN's affiliated hospitals that belong to a Network Obligated Group (UVMMC; UVMHN; Central Vermont Medical Center, Inc.; Champlain Valley Physicians Hospital Medical Center; and Elizabethtown Community Hospital) are tested at the Obligated Group level. Resp. (Dec. 20, 2022), 4-5. UVMMC represents that a seven-day reduction in its days' cash on hand will have no material impact with respect to debt covenants tested at the Network Obligated Group level and should not, by itself, have any impact on UVMMC's bond rating; both the bond rating and debt covenants are determined based on the overall financial health of the Network, including the age of its physical plant and operational performance. Resp. (Dec. 20, 2022), 4-5.

25. The project's capital expense includes a higher-than-usual 30% contingency and pricing escalation factor to account for pricing volatility in the construction market in part from COVID-related labor shortages, inflation in construction materials and supply chain constraints. App., 11.

The facilities portion of the capital expense will be depreciated over 20 years and the equipment cost will be depreciated over seven years. App., 11. UVMMC reports an annual lease expense savings of \$251,919 in FY 2024-FY 2028, totaling \$1,259,595. App., 13, (pro-forma table, lease expense savings line item). The cost for the renovation and fit-up for the two-story building is \$180.07 per square foot and the cost for the new 2,220 square foot addition to the existing building is \$592.04 per square foot. Resp. (September 16, 2022), 2. The construction of the 2,220 sq. ft. metal panel and masonry addition for staff entry, freight/staff elevator, loading area, and support space for the building and fit-up of the interior space of the existing two-story building, is estimated to be completed nine (9) months following CON approval. App., 3.

26. The project has been reflected in UVMMC's Hospital Budget submissions since FY 2019, except for FY 2021, which was submitted with little detail due to the financial uncertainties during the COVID-19 pandemic. App., 17.

27. UVMMC's referral process for Dermatology and Ophthalmology patients who express a need for mental health services and are not experiencing an acute crisis includes referring them back to their primary care physicians who will work with their mental health care provider colleagues to best assess the patients' needs. For patients in acute crisis, the practices follow UVMMC's suicide risk assessment protocol. Resp. (Oct. 5, 2022), 1-2.

Standard of Review

Vermont's CON process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000 (Certificate of Need). An applicant bears the burden of demonstrating that each of the criteria set forth in 18 V.S.A. § 9437 is met. Rule 4.000, § 4.302(3).

Conclusions of Law

I.

Under the first statutory criterion, an applicant must demonstrate that the proposed project aligns with statewide health care reform goals and principles because the project takes into consideration health care payment and delivery system reform initiatives; addresses current and future community needs in a manner that balances statewide needs; and is consistent with appropriate allocation of health care resources, including appropriate utilization of services, as identified in the Health Resource Allocation Plan (HRAP). 18 V.S.A. § 9437(1). The HRAP identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis.²

The Vermont All-Payer Accountable Care Organization Model ("the Model") is a statewide health care payment and delivery system reform initiative being undertaken by the State of Vermont and the Centers for Medicare and Medicaid Services. As part of the Model, the State

² The Vermont legislature in Act 167 (2018) made several changes to the State's CON law. As amended by Act 167, 18 V.S.A. § 9437(1)(C) continues to reference the HRAP, which is in the process of being updated. In the interim, we consider the current HRAP standards. The Health Resource Allocation Plan is posted to the Board's website at <https://gmcboard.vermont.gov/sites/gmcb/files/documents/Vermont%20Health%20Resource%20Allocation%20Plan%202009%207.1.09.pdf>.

has agreed to limit growth in the cost of certain services across all payers and for Medicare specifically. *See Amended and Restated Vermont All-Payer Accountable Care Organization Model Agreement* (2022), § 9.³ While the performance period of the Model is scheduled to end on December 31, 2023, it may be extended another year to facilitate a transition to a new model, which will likely have cost growth targets as well. *See id.*, § 2. The Model is informed by health care reform principles set out in 18 V.S.A. § 9371. These principles reflect, among other priorities, a need to contain cost growth and a recognition that cost can be a barrier to accessing necessary care. *See* 18 V.S.A. § 9371 (stating that “[s]ystemic barriers, such as cost, must not prevent people from accessing necessary health care” and that “[o]verall health care costs must be contained, and growth in health care spending in Vermont must balance the health care needs of the population with the ability to pay for such care.”)

The proposed project aligns with statewide health care reform goals reflected in the Model to the extent that it enhances UVMMC’s ability to meet current and future demand for services in a lower cost setting. Because of the way Medicare reimbursement works, we are confident that the project will create a lower cost setting for Medicare patients. *See Findings*, ¶ 21. However, the project’s impact on patients with private insurance, who already bear a disproportionate share of hospital reimbursements, is less certain.⁴ While UVMMC claims the project should not result in, or meaningfully contribute to, future commercial rate increases because it will not increase the hospital’s per unit expense, we are still concerned that decreased Medicare reimbursements may result in efforts to increase reimbursements from private or commercial payers, which would tend to increase the already high cost of private insurance, and we include conditions in the CON to guard against and monitor this dynamic. *See Findings*, ¶ 24. With these conditions, we conclude that the project aligns with statewide health care reform goals and will address future community needs in a manner that balances statewide needs.

Finally, the factual findings reflect that the proposed project meets the relevant HRAP CON standards, namely:

- Standard 1.3 (collaborative approach to delivering service has been taken or is not feasible or appropriate), *see Findings*, ¶¶ 2, 5-6;
- Standard 1.4 (applicant will be able to maintain appropriate volume for the service and will not erode volume at another Vermont facility), *see Findings*, ¶¶ 10-12;
- Standard 1.6 (collect and monitor data relating to health care quality and outcomes), *Findings*, ¶ 19;
- Standard 1.7 (project is consistent with evidence-based practices), *Findings*, ¶ 19;

³ Information about the Vermont All-Payer Accountable Care Organization Model can be found at <https://gmcboard.vermont.gov/payment-reform/APM>.

⁴ For example, in the payer revenue tables that it submitted in connection with its application, UVMMC indicates that its hospital-wide reimbursement rate for commercial and “other” payers (e.g., self-pay, worker’s comp, etc.) is 67%, while its Medicare and Medicaid reimbursement rates are around 25%. *See* Resp. (Oct. 5, 2022), Payer Revenue Report; *see also* Health Management Associates Presentation to the Green Mountain Care Board, Examination of Payment and Cost Coverage Variation Across Payers for Hospital Services (Oct. 27, 2021), https://gmcboard.vermont.gov/sites/gmcb/files/documents/BoardPres_HMA_ExaminationofPaymentandCostCoverageVariationAcrossPayersforHospitalServices_20211027.pdf (reflecting commercial cost coverage for outpatient services of 204% in 2019 compared to Medicare cost coverage of 75% and Medicaid cost coverage of 71%).

- Standard 1.8 (comprehensive evidence-based system for infectious disease), Findings, ¶ 19;
- Standard 1.9 (costs and methods for construction/renovation/fit-up are necessary and reasonable), Findings, ¶¶ 15-16, 25;
- Standard 1.10 (project is energy efficient), Findings, ¶ 16;
- Standard 1.11 (new construction is a more appropriate alternative when compared to renovation), *see* Findings, ¶ 2;
- Standard 1.12 (project complies with FGI Guidelines), Findings, ¶ 16; and
- Standard 3.4 (project was included in hospital budget submissions), Findings, ¶ 26.

II.

The second criterion requires an applicant to demonstrate that the cost of the project is “reasonable” because the applicant can sustain any financial burden likely to result from the project; the project will not result in an undue increase in the cost of care or an undue impact on the affordability of medical care for consumers; less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate; and appropriate energy efficiency measures have been incorporated into the project. 18 V.S.A. § 9437(2).

First, we consider whether UVMMC has demonstrated that it can sustain any financial burden likely to result from the project. UVMMC has made the decision to purchase the facility instead of leasing it because it will save \$2.3 million over 20 years. Findings, ¶ 20. UVMMC states that it has not decided whether to fund this \$35,246,100 project with equity or debt financing and that it will not make this decision until after the Board issues a CON. Findings, ¶ 24. If UVMMC funds the project with equity, its days’ cash on hand will be reduced by seven, to approximately 105.

The current state of UVMMC’s financial health is concerning. Days’ cash on hand is an important measure of a hospital’s liquidity. This past year, a UVMMC representative stated that one of UVMMC’s metrics for financial stability is a middle range of 200 days’ cash on hand. Testimony of Rick Vincent, *In re UVMMC Fiscal Year 2023*, Docket No. 22-004-H, Tr. 34 – 35 (August 19, 2022). UVMMC’s days’ cash on hand in Fiscal Year 2019 was 169.4. GMCB Staff Analysis, *In re UVMMC Fiscal Year 2023*, Docket No. 22-004-H (July 12, 2022), 7. In contrast, as of September 30, 2022, UVMMC had approximately 112 days’ cash on hand. Findings, ¶ 24. Moreover, in its FY 2023 budget narrative, the University of Vermont Health Network (UVMHN), UVMMC’s parent organization, expressed concern that its use of days’ cash on hand to stabilize operating expenses had placed its reserve obligations to creditors at risk. *See* UVMHN Fiscal Year 2023 Budget Narrative (July 1, 2022), 6. Indeed, the prospect of 105 days’ cash on hand for Vermont’s largest hospital and only tertiary care facility is troubling. Nevertheless, UVMMC asserts that a seven-day reduction in its days’ cash on hand will have no material impact on debt covenants tested at the UVMHN Obligated Group and should not, by itself, have any impact on UVMMC’s bond rating. And while the project is also expected to generate a negative operating margin for its first eight years of operation, UVMMC represents that these operating losses are relatively minor in the context of its overall budget. Findings ¶¶ 21-22, 24. Ultimately, we conclude that UVMMC can sustain any financial burden likely to

result from the project despite the duration of anticipated operating losses and despite the project's potential to further reduce UVMMC's available cash resources should it opt to use equity to fund the project.

Next, we consider whether UVMMC has demonstrated that the project will not result in an undue increase in the cost of care or an undue impact on the affordability of care for consumers. As part of this analysis, we must evaluate the financial implications of the project on hospitals and other clinical settings; the impact on their services, expenditures, and charges; and whether the impact on services, expenditures, and charges is outweighed by the benefit of the project to the public. The benefit of this project to the public is significant. The project will increase access to Dermatology and Ophthalmology services. Increased access is sorely needed, particularly for Dermatology services. Findings, ¶¶ 2-6. At the same time, as noted above, we are concerned that, as a result of the project and the lower Medicare reimbursement rates it entails, UVMMC may seek to increase its reimbursements for commercial or private payers, placing additional cost burdens on a segment of the population that is already bearing a disproportionate share of hospital costs. *See* Findings, ¶¶ 21. As noted above, cost can also be a barrier to access. UVMMC claims that the project should not result in, or meaningfully contribute to, commercial rate increases, and we include conditions in the CON to guard against and monitor this dynamic. With these conditions, we conclude that this aspect of the second criterion is met.

We also conclude that UVMMC has met its burden to demonstrate that less expensive alternatives are not available, would be unsatisfactory, or are not feasible or appropriate, and that appropriate energy efficiency measures have been incorporated into the project. None of the four current clinic locations can readily be renovated or expanded to meet growing demand for services. Findings, ¶ 2. UVMMC performed a financial analysis to determine whether to purchase or lease the building at 350 Tilley Drive and engaged in a competitive RFP process for the project. Owning the building was estimated to save \$2.3 million over 20 years. The building was designed to meet or exceed 2015 Vermont Commercial Building Energy Standards, and UVMMC will work with Efficiency Vermont, Green Mountain Power, and Vermont Gas Systems as the design for the building's interior and new addition is finalized. Findings, ¶¶ 16, 20.

For the reasons stated above, we conclude that the Applicant has satisfied the second criterion.

III.

The third criterion requires that the applicant demonstrate that there is an "identifiable, existing, or reasonably anticipated need for the proposed project which is appropriate for the applicant to provide." 18 V.S.A. § 9437(3). UVMMC currently owns and operates both the Dermatology and Ophthalmology practices and with this project is relocating and consolidating these practices, allowing each practice to increase the number of clinical patient care rooms, improve efficiencies, and expand in size to accommodate additional providers and support staff to meet current and projected growth in demand. The Dermatology and Ophthalmology practices are two of the busiest specialty practices on the hospital's main campus. The wait times for these services are long, with new patient visit wait times of 16 weeks for Dermatology and eight weeks for Ophthalmology as of September 2022. Findings, ¶¶ 2-6, 7, 10-12. The region's population is also aging and current demand for Dermatology and Ophthalmology services is projected to

increase. According to the Sg2 database and analytics tool used by UVMMC, from 2019 to 2023, Dermatology visit volumes at UVMMC are projected to increase by 17% and Ophthalmology visit volumes are projected to increase by 29%. Findings, ¶ 6. In their current locations, UVMMC's Dermatology and Ophthalmology practices have limited physical space and there is no adjacent space available for them to easily expand to accommodate this growth in demand for services. Findings, ¶ 2. The new facility will have the capacity to accommodate up to a 35% increase in projected annual Dermatology in-person office-based visits, and up to a 38% increase in projected annual Ophthalmology in-person office-based visits. Findings, ¶ 10.

We agree that the demand for these services is high and likely to increase in the coming years; the lengthy wait times presented in this record and elsewhere is one of the primary reasons for our approval of this project today. In order to confirm that the project is reducing wait times, we include a wait times reporting condition in the CON.

Based on the above, we conclude that the project meets the third criterion.

IV.

To satisfy the fourth criterion, the applicant must demonstrate that the project improves the quality of health care or provides greater access for Vermonters, or both. 18 V.S.A. § 9437(4).

The new clinics will be modeled on a patient-centered pod design concept that focuses on maximizing workflow efficiencies for providers and staff. UVMMC's design process analyzed patient flow to ensure privacy, safety, and convenience during the patient care encounter. The new facilities will have the capacity to accommodate up to a 35% increase in annual Dermatology in-person office-based visits, and up to a 38% increase in annual Ophthalmology in-person office-based visits. The project is expected to maintain or increase quality and most importantly, significantly expand access to, and decrease wait times for, needed services. Findings, ¶¶ 2, 4-8, 10-12. Given the importance of reducing wait times to promote health care quality and improve access, we impose conditions to provide reporting information on average visit lengths and patient volume in the CON.

Based on the above, we conclude that the project meets the fourth criterion.

V.

The fifth criterion requires an applicant to show that the project "will not have an undue adverse impact on any other existing services provided by the applicant." 18 V.S.A. § 9437(5). Moving the Dermatology and Ophthalmology practices to 350 Tilley Drive allows the main campus to better accommodate clinics for specialty services with a large inpatient component or that support emergent care, such as the Neurology practice. Relocation of both practices also allows consolidation of resources and efficiencies which should assist with attracting providers and expanding access to these critical services that currently have long wait times for scheduling visits. Findings, ¶¶ 2-7, 10-13. While the project will not provide a positive operating margin until after Project Year 8, it is not expected to negatively impact UVMMC's finances to such an extent

that it would have an undue adverse impact on UVMMC's ability to provide its other existing services. *See Findings, ¶¶ 21-24; Conclusions of Law, § II, supra.*

We conclude that the fifth criterion is satisfied.

VI.

What was previously the sixth criterion is now an overarching consideration, namely that the project serves the public good. *See Act 167 (2018), § 6 (repealing 18 V.S.A. § 9437(6) and moving the "public good" language to the lead-in sentence).* Our administrative rule identifies factors that we may consider in determining whether a project will serve the public good, including whether the applicant has demonstrated that it has analyzed the project's impact on the healthcare system and the project furthers effective integration and coordination of health care services, and whether the project will have an adverse impact on existing facilities' ability to provide medically necessary services to all in need, regardless of ability to pay or location of residence (Rule 4.000, § 4.402(3)(c), (f)).

The project will improve the quality of the health care system and promote coordination and integration by providing space for both practices to add providers and increase efficiencies. The expansion and consolidation of these practices will facilitate communication among providers, reduce wait times, and increase access to care. The updated setting will improve UVMMC's ability to recruit and retain providers and should result in better patient satisfaction, as well. *See Findings, ¶¶ 2-7, 10-13.*

The project will not have a negative effect on existing facilities. It will consolidate and update facilities for two practices that have an extensive outpatient component. Moving these practices out of the hospital setting will increase available space for inpatient and emergent care. *Findings, ¶ 13.* The relocation further benefits the health care system by decreasing the Medicare facility fee, which reduces Medicare total cost of care. *See Findings, ¶ 21.*

As such, the project will serve the public good. *See Findings, ¶¶ 2-7, 10-13.*

VII.

The seventh criterion requires that the applicant adequately consider the availability of affordable, accessible patient transportation services to the facility. 18 V.S.A. § 9437(7). We find this condition has been satisfied. UVMMC has worked in collaboration with the Special Services Transportation Agency to provide public transportation to access Tilley Drive health care services. UVMMC provides a free, fixed-route shuttle service from the Green Mountain Transit Downtown Transit Center on Cherry Street in Burlington to Tilley Drive. There are four scheduled trips daily, Monday through Friday, with stops at each of the medical office buildings along Tilley Drive. *Findings, ¶ 17.*

VIII.

The eighth statutory criterion states that if the application is for the purchase or lease of new Health Care Information Technology, it must conform to the Health Information Technology Plan. 18 V.S.A. § 9437(8).

As the project does not involve the lease or purchase of a new Health Care Information Technology, this criterion is not applicable.

IX.

The ninth and final criterion requires the applicant to demonstrate that the project supports equal access to appropriate mental health care that meets standards of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care, as appropriate. 18 V.S.A. § 9437(9). This project involves the relocation and consolidation of Dermatology and Ophthalmology practices. UVMHC's referral process for patients seen at these practices who express a need for mental health services and are not experiencing an acute crisis includes referring them back to their primary care physicians who will work with their mental health care provider colleagues to best assess the patient's needs. For patients in acute crisis, the practices follow UVMHC's suicide risk assessment protocol. Findings, ¶ 27. To the extent this criterion is applicable to the project, we find that it is satisfied.

Conclusion

Based on the above, we conclude that the applicant has demonstrated that it has met each of the required statutory criterion under 18 V.S.A. § 9437. We therefore approve the application and issue a certificate of need, subject to the conditions outlined therein.

SO ORDERED.

Dated: February 24, 2023 at Montpelier, Vermont.

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<u>s/ Owen Foster, Chair</u>)	
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<u>s/ Jessica Holmes</u>)	
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<u>s/ Robin Lunge</u>)	
)	
<u>s/ David Murman</u>)	
)	
<u>s/ Thom Walsh</u>)	

GREEN MOUNTAIN
CARE BOARD OF
VERMONT

Filed: February 24, 2023

Attest: s/ Jean Stetter, Administrative Services Director
Green Mountain Care Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Board (by email, telephone, or in writing) of any apparent errors, so that any necessary corrections may be made. (email address: donna.jerry@vermont.gov).